Ismail bin Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO K-01–34 OF 2007
HELILIAH, MOHD HISHAMUDIN AND RAMLY ALI JJCA
23 JUNE 2010

Land Law — Acquisition of land — Application for declaration to nullify acquisition — Inordinate delay in paying compensation — Appellant landowners asked to collect compensation nine years after award made — Whether breach of s 29(1) of the Land Acquisition Act 1960 ('Act') and art 13(1) of the Federal Constitution — Whether 'as soon as may be' in s 29(1) of the Act meant as soon as authority responsible for making payment 'was in a position or able to do so' — Whether entitlement to late payment charges under s 32 of the Act excused delay in compensation payment

The appellants owned three parcels of land ('the lands') in Kedah. In May 1995, the Kedah state authority published a gazette notification of its decision to acquire the lands pursuant to the Land Acquisition Act 1960 ('the Act'). An inquiry by the land administrator followed, to determine the compensation payable to the appellants. In December 1995, the land administrator filed the Form G stating his award for the lands at the rate of RM1 per square foot. Under the Act, a Form H had to be served on the appellants notifying them of the award. Under s 29 of the Act, the land administrator was duty-bound to pay the compensation 'as soon as may be' after the service on the appellants of Form H. No compensation, however, was paid within a reasonable time. It was only in January 2004, nine years after the gazette publication of the intended acquisition of the lands, that the Director of Lands and Mines, Kedah, wrote to the appellants requesting them to collect their compensation payments from his office. The appellants were also advised to make a claim for late payment charges on the delayed compensation. The appellants rejected the compensation on the ground the delay in its payment was unreasonable and contrary to s 29(1) of the Act. They said since the acquisition was not in accordance with the law, it breached art 13(1) of the Federal Constitution. The appellants filed an originating summons against the respondent for a declaration that the purported acquisition of the lands was invalid, null and void. The High Court dismissed the summons. The appellants appealed to the Court of Appeal.

Held, allowing the appeal with RM20,000 costs and granting the declaration in terms prayed for in the originating summons:

(1) The nine year delay in paying the compensation was grossly unreasonable and contravened s 29 of the Act and art 13(1) of the Federal Constitution (see para 20).

(2) Section 29(1) imposed a duty on the land administrator to pay the compensation as soon as may be. There was no duty on the part of the landowners either to ask for the payment or to remind the land administrator or any other authority for the payment (see para 30).

(3) Interpreting the phrase 'as soon as may be' in s 29(1) of the Act to mean as soon as the collector/land administrator was in a position or able to make payment, was inconsistent with the spirit and purpose of that section and watered down the protection to property rights guaranteed by art 13(1) of the Federal Constitution (see para 28).

(4) The respondent's explanation that the land administrator could not pay the compensation sooner because the money for it was to be provided by a body known as Yayasan Negeri Kedah and the funds only came in the year 2004 was not acceptable. There was no mention of this fact or of any other explanation for the delay in the respondent's affidavit (see paras 26 and 27).

(5) The role of a third party responsible for providing the funds was not mentioned at all in s 29(1). It was unfair and unjust to expect a landowner to wait nine years to get his compensation just because some third party 'responsible' to provide the money did not have the money until nine years later (see para 28).

(6) Where the delay in making payment was grossly unreasonable it was no answer to say the landowner was entitled to interest for the delay. Of paramount importance to the landowners deprived of the use and enjoyment of their land, and what justice required, was the right to compensation within a reasonable time. Section 32 should not be interpreted as conferring on the respondent or land administrator a licence to flout s 29 with impunity (see para 33).

(7) Under s 32 of the Act there was no necessity for the appellants to make a claim for late payment charges on the delayed compensation. The entitlement to late payment charges was as of right, automatic and immediate and they had to be paid forthwith together with the compensation sums (see para 35).

[Bahasa Malaysia summary

Perayu-perayu memiliki tiga bidang tanah ('tanah-tanah tersebut') di Kedah. Pada Mei 1995, pihak berkuasa Kedah telah menerbitkan warta pemberitahuan untuk keputusan mendapatkan tanah-tanah berikutan Akta Pengambilan Tanah 1960 ('Akta'). Siasatan oleh pentadbir tanah disusuli, untuk memastikan pampasan terbayar kepada perayu-perayu. Pada Disember 1995, pentadbir tanah memfailkan Borang G menyatakan awardnya bagi tanah-tanah dengan kadar RM1 sekaki persegi. Di bawah Akta, Borang H mestilah disampaikan kepada perayu-perayu untuk memberitahu mereka

tentang award. Di bawah s 29 Akta, pentadbir tanah adalah terikat dengan undang-undang untuk membayar pampasan secepat mungkin selepas penyampaian Borang H kepada perayu-perayu. Tiada pampasan, walau bagaimanapun, dibayar dalam masa munasabah. Hanya pada Januari 2004, selepas sembilan tahun penerbitan warta yang dimaksudkan bagi pengambilan tanah-tanah, Pengarah Tanah dan Galian Kedah menulis kepada perayu-perayu meminta mereka untuk mengambil bayaran pampasan daripada pejabatnya. Perayu-perayu juga dinasihatkan membuat tuntutan bagi caj pembayaran lewat bagi pampasan yang terlewat. Perayu-perayu menolak pampasan atas alasan bahawa kelewatan dalam pembayaran adalah tidak munasabah dan bertentangan dengan s 29(1) Akta. Mereka menghujahkan memandangkan pengambilan tidak menurut undang-undang, ia melanggar perkara 13(1) Perlembagaan Persekutuan. Perayu-perayu memfailkan saman pemula terhadap responden bagi satu deklarasi bahawa tujuan pengambilan tanah-tanah adalah tidak sah dan batal. Mahkamah Tinggi menolak saman. Perayu-perayu merayu ke Mahkamah Rayuan.

Diputuskan, membenarkan rayuan dengan kos RM20,000 dan membenarkan permohonan deklarasi bagi terma-terma yang dipohon bagi saman pemula:

(1) Kelewatan sembilan tahun dalam membayar pampasan adalah sangat tidak munasabah dan bercanggah dengan s 29 Akta dan perkara 13(1) Perlembagaan Persekutuan (lihat perenggan 20).

(2) Seksyen 29(1) mengenakan tanggungjawab ke atas pentadbir tanah untuk membayar pampasan secepat mungkin. Tiada tanggungjawab bagi pemilik tanah untuk sama ada meminta pembayaran atau untuk mengingatkan pentadbir tanah atau pihak berkuasa lain bagi pembayaran (lihat perenggan 30).

(3) Menafsirkan frasa secepat mungkin dalam s 29(1) Akta untuk bermaksud apabila pemungut/pentadbir tanah dalam keadaan atau mampu membuat pembayaran, adalah tidak konsisten dengan makna dan tujuan seksyen dan kurang berkesan bagi melindungi hak-hak harta yang dijamin oleh perkara 13(1) Perlembagaan Persekutuan (lihat perenggan 28).

(4) Penjelasan responden bahawa pentadbir tanah tidak membayar pampasan lebih awal kerana wang baginya disediakan oleh badan yang dikenali sebagai Yayasan Negeri Kedah dan dana hanya tiba pada tahun 2004 tidak boleh diterima. Tidak dinyatakan mengenai fakta atau penjelasan lain bagi kelewatan dalam afidavit responden (lihat perenggan 26 dan 27).

(5) Peranan pihak ketiga bertanggungjawab bagi menyediakan dana tidak dinyatakan langsung dalam s 29(1). Tidak adil untuk mengharapkan

pemilik tanah menunggu sembilan tahun bagi mendapatkan pampasan hanya kerana pihak ketiga 'bertanggungjawab' menyediakan wang tidak mempunyai wang sehingga sembilan tahun kemudian (lihat perenggan 28).

(6) Di mana kelewatan membuat pembayaran adalah sangat tidak munasabah, ia bukanlah jawapan untuk menyatakan bahawa pemilik tanah berhak ke atas faedah bagi kelewatan. Adalah kepentingan utama kepada pemilik-pemilik tanah terhalang daripada penggunaan dan kenikmatan tanah mereka dan yang diperlukan keadilan, adalah hak untuk pampasan dalam masa yang munasabah. Seksyen 32 tidak sepatutnya ditafsirkan sebagai memberi responden atau pentadbir tanah satu lesen untuk melanggar s 29 dengan kebebasan daripada hukuman.

(7) Di bawah s 32 Akta, tiada keperluan bagi perayu-perayu membuat tuntutan bagi kelewatan pembayaran caj pampasan terlewat. Hak kepada caj pembayaran terlewat adalah hak, automatik dan segera dan mereka perlu dibayar bersama dengan jumlah pampasan (lihat perenggan 35).]

Notes

For a case on application for declaration to nullify acquisition, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) para 2062.

Cases referred to

Dato Fong Chow & Ors v Pentadbir Tanah Daerah Jerantut & Anor [1998] 3 MLJ 325, HC (not folld)

Pemungut Hasil Tanah, Daerah Barat Daya, Penang v Kam Gin Paik & Ors [1986] 1 MLJ 362, PC (folld)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35, FC (folld)

Pemungut Hasil Tanah, Kuantan v Oriental Rubber & Palmoil Sdn Bhd [1986] 1 MLJ 39, SC (refd)

Tan Boon Bak & Sons Ltd v Government of the State of Perak & Anor [1983] 1 MLJ 117 (ovrld)

Legislation referred to

Federal Constitution art 13, 13(1)

Land Acquisition Act 1960 ss 8, 12, 14, 29, s 29(1), 29A, 32, Forms F, H

V Rajadevan (Rajadevan & Associates) for the appellants.

Murtazadi Amran (Rafiah Yusof, Senior Federal Counsel with him) (Assistant State Legal Adviser, Kedah State Legal Adviser office) for the respondent.

Mohd Hishamudin JCA (Delivering judgment of the court):

[1] This is an appeal by the appellants (the plaintiffs before the High Court)

against the decision of the learned judge of the High Court of Alor Setar. On 17 January 2007 the learned judge had dismissed the appellants' originating summons action against the respondent (the defendant at the High Court) for a declaration that the purported acquisition proceedings of their lands pursuant to the Land Acquisition Act 1960 ('the Act') be declared null and void.

[2] We have allowed the appeal with costs and we now give our grounds.

[3] The facts of the case are not disputed.

[4] The appellants are the registered owners of the following three parcels of lands:

(1) SPK 5736 (now known as GM 370) Lot 201;

(2) SPK 5737 (now known as GM 371) Lot 202; and

(3) SPK 5739 (now known as GM 372) Lot 204.

[5] These parcels of lands are situated in the mukim of Telok Chengai, in the district of Kota Setar, Kedah.

[6] On 25 May 1995 the State Authority of Kedah published in the *Gazette* (pursuant to s 8 of the Land Acquisition Act 1960) of its decision to acquire the appellants' lands pursuant to the provisions of the Land Acquisition Act. The purpose of the acquisition was for a project known as 'Projek Pembangunan Ampang Jaya, Residential, Recreational and Cultural Park di Mukim Telok Chengai, Daerah Kota Setar'.

[7] Following the publication of the notice of the decision to acquire in the *gazette*, and in compliance with the prescribed formalities, the land administrator held an inquiry (Inquiry No 50 of 1995) under s 12 of the Act to determine the appropriate compensation to be awarded to the respective landowners, that is to say, to the appellants.

[8] On 17 December 1995, the land administrator, pursuant to s 14 of the Act, filed in his office the Form G stating his award for each of the three parcels of lands. The compensation stated in the award was RM1 per square foot.

[9] Under s 16 of the Act, after filing his award under s 14 of the Act, the land administrator must serve on each of the landowners owners a form known as Form H Form H that shall state the award of the land administrator (as stated in Form G). There is nothing in the affidavits of the parties that state that Form H had been served on the landowners. However, there is no suggestion from

either party (be it the plaintiffs or the defendant) that Form H was never served. Hence, for the purpose of this judgment, it shall be assumed that the Form H was served on the landowners soon after the filing of Form G.

[10] Under s 29 of the Act, there is a duty on the part of the land administrator to make payment as soon as may be after the service on the landowners of the notice of the award in Form H.

[11] Section 29 of the Act states:

> Payment of compensation or deposit in Court —
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> 29(1A) After a notice of award in Form H has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, as soon as may be, make payment of each amount awarded entitled thereto unless –
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> (a) there shall be no person competent to receive such payment;
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> (b) the person entitled thereto does not consent to receive the amount awarded; or
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> (c) there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.

[12] However, in the present case, the compensations were never paid within reasonable time to the landowners. It was only some nine years later (that is, nine years after the publication of the intended acquisition notice in the *gazette* pursuant to s 8 of the Act), that the State Director of Lands and Mines, Kedah ('the state director'), wrote letters (dated 1 January 2004) to the landowners requesting them to collect the cheques (that is, the compensation payments) from his office (that is, the office of the State Director of Lands and Mines). In the same letters, they are also advised to 'make a claim for late payment charges' by reason of the delay on the part of the land administrator in paying the compensation. The relevant paragraph of the letter (taking the letter to the third appellant/plaintiff, as an example) from the state director pertaining to late payment charges reads:

> 3. Berdasarkan peruntukan section 29A Akta Pengambilan Tanah 1960 pihak tuan juga boleh menuntut bayaran denda lewat 8% setahun selama 8.8 tahun berjumlah RM195,106.20 bagi keseluruhan lot 201. Jumlah bayaran denda lewat 8% untuk bahagian tuan/puan ialah RM26,082.60. Dengan ini pihak tuan adalah dinasihatkan membuat tuntutan ini dengan kadar yang segera bagi membolehkan pentadbiran ini mengambil tindakan selanjutnya.

[13] The reference to s 29A of the Act by the state director in the above letter is, legally, erroneous but we shall allude to this issue later in this judgment.

A The state director in his affidavit offers no explanation for the unreasonably long delay. He only avers that the appellants are entitled to late payment charges for the delay.

B **[14]** The appellants rejected the compensations on the grounds that the length of delay in making the payments of the compensations was unreasonable. They contend that the unreasonable delay is contrary to s 29(1) of the Act and thus was not in accordance with the law; and since the acquisition was not in accordance with the law, the acquisition was contrary to art 13(1) of the Federal Constitution. They argue that since the acquisition was unlawful as well as unconstitutional, therefore, the acquisition was invalid and null and void.

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D **[15]** Before this court, the learned counsel for the appellants, Encik Rajadevan, in his submission refers to the following cases:

(1) *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35;

(2) *Pemungut Hasil Tanah, Daerah Barat Daya, Penang v Kam Gin Paik & Ors* [1986] 1 MLJ 362; and

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(3) *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn Bhd* [1986] 1 MLJ 39.

F **[16]** In *Ong Gaik Kee*, the declaration under s 8 of the Land Acquisition Act was published in the *gazette* on 25 April 1974. However, the inquiry to determine compensation was only held seven years later. The landowner applied to the court for certiorari to quash the inquiry and the award of the collector on the ground of unreasonable delay. The High Court quashed the award and the inquiry, and on appeal the Supreme Court affirmed the decision. Salleh Abas CJ (Malaya) (as he then was) in delivering the judgment of the Supreme Court ruled (at p 37):

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> We think that it is sufficient to decide this appeal on the basis of a simpler question, ie whether or not in view of the long delay resulting in an injustice to the land owner the acquisition was done in accordance with the law (the Land Acquisition Act). Only in the circumstances that it is not done in accordance with the Act can we say that the acquisition is contrary to the requirement of cl (1) of art 13 of the Federal Constitution which requires that to be lawful every deprivation of property must be done in accordance with the law.

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> Every exercise of statutory power must not only be in conformity with the express words of the statute but above all must also comply with certain implied legal requirements. The court has always viewed its exercise as an abuse and therefore treats it as illegal where the exercise is done for an inadmissible purpose or on irrelevant grounds or without regard to relevant consideration or with gross

unreasonableness (*de Smith's*, (4th Ed) at p 323; and *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223).

What then is the 'convenient speed'? In our view it must 'as soon as possible' or 'within a reasonable time', and not 'as late as possible'. Obviously what amounts to 'convenient speed' must vary from case to case and in our judgment seven years delay is certainly not a 'convenient speed' as it is so far outside the normal period of time that no reasonable authority could ever regard it as reasonable. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal. (*Regina v St Albans Crown Court, Ex-parte Cinnamond* [1981] QB 480 and *Regina v Tottenham Justices, Ex-parte Dwarkados Joshi* [1982] 1 WLR 631.)

[17] The principle as stated by Salleh Abas CJ (Malaya) in the above passage (particularly, in the last paragraph) was subsequently affirmed by the Privy Council in *Kam Gin Paik*. In this case, there was a delay of seven years between the s 8 declaration and the notice of the inquiry issued by the land administrator to determine compensation. Lord Keith of Kinkel, in delivering the judgment of the Privy Council, said (at p 365):

Delay contrary to the express or implied statutory requirements is in itself a ground invalidating proceedings which follow such delay, without the necessity of any inference that the acquisition has been abandoned.

Applying these principles their Lordships are of opinion that in this case the delay of seven years between G N 89 and the appellant's notice of inquiry on March 22, 1979 had the effect that the latter was given in contravention of the statutory requirements and did not constitute a valid exercise of power. No attempt was made to justify or explain the delay.

[18] In *Oriental Rubber & Palmoil* the notification under s 8 of the Land Acquisition Act was published on 16 August 1979 but the award was made on 25 March 1983. There was no reasonable explanation for the long delay. The Supreme Court, following *Ong Gaik Kee* and *Kam Gin Paik* upheld the finding of the High Court judge that in the absence of a reasonable explanation the long delay of three and a half years was unreasonable. However, the Supreme Court set aside the order of the High Court that quashed the inquiry and the award on the ground that the respondent (landowner) had failed to prove that he had suffered grave injustice as a result of the unreasonably long delay.

[19] In the present case, guided by the above authorities, in particular, *Ong Gaik Kee* and *Kam Gin Paik*, we hold that the nine-year delay in paying the compensation is grossly unreasonable and hence is in contravention of s 29 of the Act and art 13 cl 1 of the Federal Constitution. Article 13 cl 1 provides:

13 Rights to property —

(1) No person shall be deprived of property save in accordance with the law.

[20] Clearly in the present case the deprivation of the plaintiffs' properties has not been in accordance with the law as there had been non-compliance with s 29(1) of the Act.

[21] Encik Murtazadi, the learned assistant state legal advisor, for the respondent, submits that the word 'as soon as may be' in s 29(1) of the Act must be interpreted to mean as soon as the land administrator is in a position to make the payment. He refers to two High Court decisions, namely:

(a) *Tan Boon Bak & Sons Ltd v Government of the State of Perak & Anor* [1983] 1 MLJ 117; and

(b) *Dato Fong Chow & Ors v Pentadbir Tanah Daerah Jerantut & Anor* [1998] 3 MLJ 325.

[22] In *Tan Boon Bak*, the delay in making the payment by the collector was seven years. The unreasonably long delay was because the authority that was to make the payment was not the collector but the State Economic Development Corporation (SEDC). The SEDC was not able to make the payment sooner because the SEDC was in the process of reorganisation and had other priorities. Ajaib Singh J (as he then was) in his judgment said (at p 120):

> I think the words 'as soon as may be' which appear in a statute should be read as meaning that any person who is required to do something should do it as soon as he is in a position or is able to do so.

[23] On the seven years' delay the learned judge ruled it as being 'definitely inordinate':

> Giving his reasons for the delay in providing the money the general manager of the SEDC said that during the relevant years the SEDC was in the process of reorganisation and they also had a number of priority projects on hand. I accept the evidence of the general manager but still the delay of seven years is definitely inordinate and the question to be decided now is whether this delay renders the acquisition proceedings a nullity.

[24] But despite making a finding that the seven year delay was 'definitely inordinate', the learned judge, nonetheless, went on to hold:

> I have given considerable thought to this question and would say that in all the circumstances of this case the delay does not render the acquisition proceedings null and void.

[25] In the case before us Encik Murtazadi explains that the land administrator was not in a position to pay the compensation sooner because the money for the compensation was to be provided by a body known as Yayasan Negeri Kedah and that the respondent received the cheques from this body only in the year 2004.

[26] With respect, we are unable to accept this explanation for two reasons. Firstly, the respondent's affidavit makes no mention of the fact that the land administrator was waiting for the compensation money to come from this body called Yayasan Negeri Kedah. Indeed, as we have mentioned earlier, the respondent's affidavit contains no explanation whatsoever for the delay.

[27] Secondly, with respect, we are unable to agree to the interpretation of the words 'as soon as may be' in s 29(1) as suggested by the learned assistant state legal adviser or as given by Ajaib Singh J in Tan Boon Bak that those words mean as soon as the collector/land administrator was in a position or able to make the payment. Such an interpretation is far-fetched as s 29(1) imposes the statutory duty to make the payment 'as soon as may be' only on the collector/land administrator: the role of a third party responsible for providing the funds is not mentioned at all in s 29(1). We are of the view that such an interpretation is inconsistent with the spirit and purpose of s 29(1). It was unfair and unjust to expect a landowner to wait for seven years (or, in the present case, nine years) to get his compensation just because some third party 'responsible' to provide the money did not have the money until seven years later (or, in the present case, until nine years later). What if the party concerned could come up with the money only twenty years later? Must the landowner be expected to wait for twenty years? Clearly, such an interpretation as adopted by the learned judge in *Tan Boon Bak* waters down the constitutional protection as to rights to property as guaranteed by art 13, cl (1), of the Federal Constitution. With *Ong Gaik Kee* and *Kam Gin Paik* in mind, we do not think that *Tan Boon Bak* was correctly decided.

[28] In *Dato Fong Chow* the Form H notice was dated 25 August 1983 but until 1988 the compensation was still not paid. Then by a letter dated 2 January 1988 the Lembaga Kemajuan Negeri Pahang (the authority for which the land was acquired) offered a scheme of payment: the payment of the compensation was to be made by installments within four years, beginning with January 1988 to August 1991. The landowners rejected this offer. They, through their solicitors, demanded that payment be made within five days. The Lembaga Kemajuan Negeri Pahang did not accede to this demand. Lamin J (as he then was) refused to hold that the long delay in paying the compensation was unreasonable and hence unlawful. Instead the learned judge made a

finding that the landowners themselves had contributed to the delay. The learned judge said (at p 327):

> With regard to the alleged delay in settling the compensation, I must say the owners themselves have contributed to the delay.

[29] With respect, we are unable to agree with this finding. Section 29(1) imposes a statutory duty on the land administrator to pay the compensation as soon as may be. There is no duty on the part of the landowners either to ask for the payment (but the landowners, however, did ask — and rightly so — in view of the long delay) or to remind the land administrator (or any other authority) for the payment (but the landowners, however, through their solicitors, did send reminders — and rightly so — in view of the long delay).

[30] Further the learned judge said:

> So, simply for not paying this debt, the authority is not in breach of art 13 of the Federal Constitution. This debt must be settled 'as soon as may be' as required by s 29(1) of the Land Acquisition Act. The said provision merely stipulates the time frame within which a debt must be settled. If it is not paid within whatever time, the owner of the land is entitled to sue for the money as long as he is not time-barred.

[31] Thus, Lamin J was of the view that s 29(1) merely imposes a time frame (and not a statutory duty to make payment within a reasonable time) and that there was no contravention of either s 29(1) of the Act or of art 13 of the Federal Constitution, and accordingly refused to grant the declaration sought by the landowners that the land acquisition was unlawful and unconstitutional by reason of unreasonable delay in paying compensation. To the learned judge, the only remedy that the landowners had in the light of the long delay in the payment of the compensation was to institute a civil suit, but he, however, did not make it clear in his judgment as to who the landowners should sue, whether it should be the Lembaga or the collector or the state authority. With respect, again bearing in mind *Ong Gaik Kee* and *Kam Gin Paik*, we are unable to agree with the views or the decision of Lamin J in *Dato Fong Chow*.

[32] It is further argued by the respondent that the long delay does not invalidate the acquisition of the lands as the appellants would be entitled to interests for the late payments under s 32 of the Act. With respect, we are also unable to accept this argument. There is no merit in it. In our view, where the delay in making payment is grossly unreasonable, as has happened in the present case, where there has been a delay of nine years, it is no answer that the

landowner is entitled to interests for the delay: what is of paramount importance to the landowners, who have been deprived of the use and enjoyment of his land, and what justice requires, is the right to compensation within a reasonable time. Furthermore, s 32 ought not to be interpreted as conferring on the respondent (or the land administrator) a 'license' to flout the stipulation of s 29 with impunity.

[33] Finally, we have this further observation. Section 32 of the Act provides:

> Late payment charges —
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> 32(1) When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before the due date, the Land Administrator shall pay the amount awarded with late payment charges thereon at the rate of eight per cent per annum from the due date until the time of such payment or deposit.
>
> 1(c) In this section 'due date' in relation to any land means the date of taking possession of the land or a date three months after the service of a notice under subsection 16(1) in respect of the land, whichever is the earlier.

[34] It is to be recalled that the letters of the state director of 1 January 2004 to the appellants referred to s 29A of the Act. We do not think that this is the right section to cite as there was no reference to court made by the land administrator pursuant to the Act as the appellants had never objected to the amount of compensation. The learned assistant state legal adviser, in his submission, however, correctly refers to s 32 of the Act although he does not explain as to why the state director's letters referred to s 29A. Be that as it may, it is clear that under s 32 there is an automatic right to be paid late payment charges as long as there has been a delay in making compensation payment by the land administrator. Under s 32 there is no necessity for the appellants to make a claim for late payment charges. The entitlement to late payment charges is as of right and is immediate. Therefore, it is wrong for the state director, in his letters to the appellants, to advise the appellants to 'make a claim' for late payment charges. As a matter of law the appellants need not have to make a claim in order to be paid the late payment charges. They should be paid forthwith the late payment charges together with the compensation sums. Of course, now the appellants are no longer interested in the compensation and interests: they just want their lands back.

[35] For the reasons that we have given above, we are allowing the appeal. Accordingly, we grant the declaration in terms as sought in the originating summons; and we award to the appellants costs of RM20,000.

[36] Appeal allowed with costs.

Appeal allowed with RM20,000 costs and declaration in terms prayed for in the originating summons granted.

Reported by Ashok Kumar